

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
500 PEARL STREET
NEW YORK, NY 10007

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

(212) 805-0194

September 29, 2022

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RE: Kane et al. v. de Blasio, et al., 21-cv-7863 (NRB) / Keil et al. v. City of New York, et al., 21-cv-8773 (NRB)

Dear Counsel:

The Court is in receipt of plaintiffs' Motion for Attorneys' Fees and Costs (the "Motion"); the Corporation Counsel's letter requesting an extension of time to respond to the Motion; and plaintiffs' letter in opposition.

Plaintiffs contend that the Second Circuit's November 28, 2021 decision gives plaintiffs prevailing-party status, thus entitling plaintiffs' counsel to attorney's fees. See Kane v. De Blasio, 19 F.4th 152 (2d Cir. 2021). However, the subsequent dismissal of plaintiffs' complaint with prejudice raises a serious question as to whether plaintiffs are, in fact, prevailing parties. See 10 Moore's Federal Practice - Civil § 54.171 (2022) (to be considered prevailing parties, plaintiffs "must [have] obtain[ed] at least some relief on the merits of a claim; usually, a purely procedural victory does not make the plaintiff a prevailing party").

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Moreover, given plaintiffs' pending appeal on the merits before the Second Circuit, the Court also questions whether it would be judicially efficient and/or sensible to address the issue of attorney's fees before the Second Circuit resolves plaintiffs' appeal.

The Court therefore directs plaintiffs to submit a response addressing why: (1) the Second Circuit's November 28, 2021 decision entitles plaintiffs to prevailing-party status when their complaint was subsequently dismissed on the merits; and (2) the Court should decide the issue of attorney's fees prior to the Second Circuit's resolution of plaintiffs' appeal. Following plaintiffs' submission, Corporation Counsel will have twenty-one (21) days to respond.

Very truly yours,

A handwritten signature in blue ink, reading "Naomi Reice Buchwald", is written over a horizontal line.

Naomi Reice Buchwald
United States District Judge